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U.S. Citizenship
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Services

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FILE:

EAC 06 120 50892

Office: VERMONT SERVICE CENTER

Date: AUG 28 2007

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and
Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your
case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Center Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Haiti, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The Acting Center Director denied the petition after determining that the record did not establish that the petitioner had complied with the requirements under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162 dated January 5, 2006. *Decision of the Acting Center Director*, dated November 7, 2006.

A petitioner, who applies for benefits on behalf of a beneficiary, must meet the requirements under section 8 C.F.R. § 103.2(b)(1), which states in pertinent part:

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation....

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA). IMBRA provides that a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions of the petitioner for any of the following "specified crimes":

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If the petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of the specified crimes or if Citizenship and Immigration Services (CIS) ascertains through relevant background checks that the petitioner has been convicted, the petitioner will be required to submit certified copies of all court and police records showing the charges and dispositions for every such conviction. This is required even if the petitioner's records were sealed or otherwise cleared.

IMBRA also imposes limitations on the number of petitions an individual seeking a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have had approved. If the petitioner has filed two or more K-1 visa petitions at any time in the past, or has had a K-1 visa petition approved within the two-year period preceding the filing of the current petition, the petitioner must request a waiver. These limitations do not apply to petitioners for a K nonimmigrant visa for an alien spouse (K-3).

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Factors considered in the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence; and
- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or of obtaining approvals of petitions every few years.

If the petitioner has a history of violent offenses, the filing limitations may not be waived unless extraordinary circumstances exist in the petitioner's case.

IMBRA requires that a waiver must be approved if the petitioner can establish that he or she:

- Was battered or subjected to extreme cruelty by his or her spouse, parent, or adult child at the time he or she committed the violent offense(s), and
 - Was not the primary perpetrator of violence in the relationship;
 - Was acting in self-defense;
 - Violated a protection order intended for his/her protection; or
 - Committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime committed and the petitioner having been battered or subjected to extreme cruelty.

The provisions of IMBRA apply to all petitions filed on or after March 6, 2006.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on March 20, 2006. In response to an April 16, 2006 request for evidence, the petitioner provided proof that he had complied with the meeting requirement of section 214(d) of the Act. He did not, however, respond to a second request for evidence asking him to submit a completed "Supplement to the I-129F IMBRA Form.

On appeal, the petitioner states that he never received the IMBRA form. *Form I-290B*.

Based on the record, the AAO finds that the IMBRA form was sent to the petitioner at his correct address. As the petitioner has failed to comply with the requirements under IMBRA, the appeal will be dismissed pursuant to the regulation at 8 C.F.R. § 103.2(b)(1).


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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.
The petitioner has not met that burden.

ORDER: The appeal is dismissed.